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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,361	02/18/2000	Marc Howard Spinoza	FIFW:019US	8242
33425 7590 12/29/2008 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
VU, QUYNH-NHU HOANG				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
12/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/506,361

Applicant(s)

SPINOZA, MARC HOWARD

Examiner

QUYNH-NHU H. VU

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 81-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 81-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: 10/30/08 & 3/23/09

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Amendment and Request for Continued Examination (RCE) filed on 9/23/08 has been entered.

Claims 81-100 are present for examination.

Claims 1-80 are cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-90, 92-93, 95-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Woods et al. (US 4,583,534).

Woods discloses a medical such as an orthopedic prosthetic device comprising: a sterile tubular sleeve 20 of variable length having a first aperture 26; a second aperture 32; wherein the tube can pass at a first and second end of the tubular sleeve; wherein the tubular sleeve has a perforated or foraminous wall defining a plurality of openings (X-section) and wherein the tubular sleeve further comprises attachment means 34, 38 (a belt) for attaching the sleeve to a patient, wherein the sleeve comprise a substantially uniform braded sleeve that exerts a pressure distributed over an elongate portion of the tube when the sleeve is lengthened to grip the tube; a ring 26, 32 surrounding the first and second aperture; a collar 54 at one end of the sleeve

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 81-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delk et al. (US 5,292,312) in view of Sobin et al. (US 4,509,877)

Delk discloses a medical conduit holder for securing medical conduits to the patient comprising: an attachment means 30 and 20 (Fig. 2) or strap 30 (Figs. 3-6) are attached to a medical conduit C (such as catheter/tube) to a patient. Delk does not suggest the medical conduit C comprises a tubular sleeve of variable length as described in claims 81, 87-90, 92-93, 95 and 97-10.

Sobin discloses a fastener or strain relief device have also been used to protect the flexible member (catheter) to a rigid member comprising a tubular sleeve 6 of variable length having a first aperture through which the tube 11 can pass at a first end of the sleeve and a second aperture through which the tube can pass at the second end of the sleeve; wherein the tubular sleeve 6 is flexible strands, therefore it is capable when lengthened of gripping a tube and when shortened of sliding along the tube; wherein the tubular sleeve 6 further comprises attachment means (3, 4, 5); wherein the attachment comprises a flange 5 or 3; wherein the sterile tubular sleeve 6 comprises a substantially uniform braided sleeve that exerts a pressure (such as the tubular sleeve is stretched, Fig. 2, col. 4, line 35-col. 5, line 20) distributed over an elongate portion of the tube when the sleeve is lengthened to grip the tube; the tubular sleeve 6 has a ring 7 or 8 (Figs. 2-3) at one end of the sleeve, the ring surrounding the aperture.

Additionally, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., "the tube can pass...long the tube" of claims 1, 95; "a pad of flange for lying against part of the patient's body" of claim 85; "the pad or flange can be adhered or sutured to the patient's body" of claim 86, "an opening is capable of permitting the tube..." of claim 87; "the ring being operable to shorten or length of the sleeve" of claims 92, 95; functional limitations, do not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim, see In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974).

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Delk with a tubular sleeve or strain relief device, as taught by Sobin, in order to provide a strain relief which will be uniformly strong and resistant to pulling stress throughout its length.

Regarding claim 83, Delk in view of Sobin disclose the invention substantially as claimed. Delk in view of Sobin does not disclose that the loop is formed by doubling over the sleeve. However, it is common sense that one skill in the art would recognize that the loop formed of doubling for increasing strengthens.

Response to Arguments

Applicant's arguments filed 9/23/08 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Sobin fails to disclose "a medical or surgical fastener having "attachment means for attaching the sleeve to a patient". However, the limitations "the medical or surgical fastener having an attachment means for attaching the sleeve to a patient" are fully disclosed by Delk.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sobin suggests providing a braid or tubular sleeve 6 attached to flexible member such as catheter for providing the strain relief stronger and

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resistant to pulling stress through out its lengths. Therefore, one skill in the art would provide the tubular sleeve as taught by Sobin, in to the device of Delk for providing the strain relief stronger.

Applicant argues that neither Sobin nor Delk fails to disclose or suggest "a substantially-uniform braided sleeve that exerts a pressure distributed over an elongate portion of the tube".

In response, the word "substantially" is very broadly. Therefore, the braid sleeve 6 of Sobin is also substantially uniform braided sleeve (Figs. 1-2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quynh-Nhu H. Vu whose telephone number is 571-272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu
Examiner
Art Unit 3763